PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76686368
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	

The Examining Attorney has issued a refusal of registration, claiming that the Section 2 (f)/Acquired Distinctiveness Evidence submitted by Applicant in support of registration.

Applicant previously submitted exemplars of its advertising and promotional materials containing the mark, as well as evidence of its advertising expenditures over the last 5 years. The Examining Attorney has countered that the advertising expenditures are "relatively low," and therefore insufficient to demonstrate acquired distinctiveness. Applicant respectfully disagrees.

First, no expense benchmark is defined by rule of procedure or case law as sufficient to demonstrate the acquired distinctiveness of an owner's mark, and the Examining Attorney has cited no such precedent establishing such benchmark.

Second, while multi-national, billion dollar companies may spend millions of dollars annually to create secondary meaning in connection with their marks, small, closely-held companies logically spend less, and those lower expenditures may proportionately constitute just as high a financial burden, and create just as much impact, as the higher expenditures. Further, given the smaller size of the Applicant's business, smaller expenditures are proportional, reasonable, and cannot be demonstrated to create an insignificant impact upon the development of secondary meaning in association with the mark.

By way of example, Applicant's expenditures on advertising and marketing in connection with the mark constituted the following for the 3 years indicated below:

2006 - 2% of total company revenues, and 14% of company income

2007 - 2% of company revenues, and 61.8% of company income

2008 - 2% of company revenues, and 32.5% of company income.

Based upon the foregoing, Applicant respectfully submits that secondary meaning has been established by the Applicant in connection with the mark, and requests that the Examining Attorney

withdraw her objection to registration and that the mark proceed to publication and registration.

Applicant has concurrently herewith filed a Notice of Appeal of the Examining Attorney's determination with the Trademark Trial and Appeal Board.

ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Applicant has concurrently herewith filed a Notice of Appeal with the Trademark Trial and Appeal Board
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Sharon L. Toerek/
SIGNATORY'S NAME	Sharon L. Toerek
SIGNATORY'S POSITION	Attorney of Record, Ohio bar member
DATE SIGNED	05/17/2010
RESPONSE SIGNATURE	/Sharon L. Toerek/
SIGNATORY'S NAME	Sharon L. Toerek
SIGNATORY'S POSITION	Attorney of Record, Ohio bar member
DATE SIGNED	05/17/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon May 17 15:11:21 EDT 2010
TEAS STAMP	USPTO/RFR-69.219.8.14-201 00517151121991016-7668636 8-4607b1d67bbf13755fbfe58 6e3d4adfaf2-N/A-N/A-20100 517144655839975

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **76686368** has been amended as follows:

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

The Examining Attorney has issued a refusal of registration, claiming that the Section 2 (f)/Acquired Distinctiveness Evidence submitted by Applicant in support of registration.

Applicant previously submitted exemplars of its advertising and promotional materials containing the mark, as well as evidence of its advertising expenditures over the last 5 years. The Examining Attorney has countered that the advertising expenditures are "relatively low," and therefore insufficient to demonstrate acquired distinctiveness. Applicant respectfully disagrees.

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Applicant has concurrently herewith filed a Notice of Appeal of the Examining Attorney's determination with the Trademark Trial and Appeal Board.

ADDITIONAL STATEMENTS
Applicant has concurrently herewith filed a Notice of Appeal with the Trademark Trial and Appeal Board

SIGNATURE(S)
Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Sharon L. Toerek/ Date: 05/17/2010
Signatory's Name: Sharon L. Toerek
Signatory's Position: Attorney of Record, Ohio bar member

Request for Reconsideration Signature
Signature: /Sharon L. Toerek/ Date: 05/17/2010
Signatory's Name: Sharon L. Toerek
Signatory's Position: Attorney of Record, Ohio bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 76686368
Internet Transmission Date: Mon May 17 15:11:21 EDT 2010
TEAS Stamp: USPTO/RFR-69.219.8.14-20100517151121991O
16-76686368-4607b1d67bbf13755fbfe586e3d4
adfaf2-N/A-N/A-20100517144655839975